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IN THE HIGH COURT OF JUDICATURE OF BOMBAY BENCH AT AURANGABAD

WRIT PETITION NO. 10214 OF 2021

M/s Dainik Bhaskar Corporation Ltd, PETITIONER

VERSUS

Regional Provident Fund Commissioner-1 & Ors RESPONDENTS

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Mr. P. R. Katneshwarkar a/w Mr. N.S.Jaju and Mr. Vishwabhushan Kamble, Advocates for petitioner
Mr. Nitin K. Chaudhari, Advocate for respondent No.1

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 6th MARCH, 2023

ORDER :

1. By this petition, filed under Article 226 and 227 of the Constitution of India, the petitioner Corporation takes exception to the order dated 10th August, 2021 passed by the Central Government Industrial Tribunal, Nagpur ("CGIT" for short), thereby directing the petitioner to deposit a sum of Rs.1,53,67,084/- which is 50% of the total amount due under section 7-A of the Employees Provident Fund and Miscellaneous Provision Act, 1952 Act (for short "the said Act").

2. The respondent, by exercising powers under section 7-A of the said Act, determined an amount of Rs. 14,53,06,094/- in

respect of 1014 employees, for the period from April, 2011 to October, 2017.

3. The petitioner has already remitted an amount of Rs.11,45,71,926/- out of the said amount. The respondent, therefore, by order dated 7^{th} December, 2020, directed the petitioner to remit remaining amount of Rs.3,07,34,168/-within a period of 15 days from the date of receipt of the order.

4. The petitioner challenged the said order by filing appeal under section 7-I of the said Act before CGIT. The CGIT, by the impugned order, directed the petitioner to deposit 50% of the amount due under section 7-A of the said Act, within one month. The petitioner is aggrieved by this order.

5. Heard learned advocate for the petitioner and the learned advocate for the respondent. Perused the memo of writ petition and documents annexed along with it, affidavit in reply filed by the respondent, citations relied on by the parties and the impugned order.

6. The petitioner has assailed the impugned order on merits, contending that that the petitioner is not liable to pay 50% amount.

7. In support of his arguments, the petitioner has placed reliance on ***"Regional Provident Fund Commissioner – II West Bengal V/s Vivekanand Vidya Mandir and Others" (2020) 17 SCC 643*** and ***"District Exhibitors Association, Muzzafarpur and Others V/s Union of India and Others" (1991) 3 SCC 119.***

8. Learned advocate for the petitioner further submits that already 50% amount i.e. Rs.76,83,542/- is deposited by the petitioner and, therefore, by setting aside the impugned order, the CGIT may be directed to decide the appeal on merits.

9. Learned advocate for respondent No.1 strenuously opposed the petition. He submits that when the petition was entertained by this Court, the CGIT was not available, however, according to him, now the CGIT is available and the petitioner can raise all the points raised in this petition, before the CGIT. According to him, the submission of the learned advocate for the petitioner is not acceptable in view of provisions of section 7-O of the said Act, which provides for deposit of 75% of the amount due, at the time of entertaining the appeal. Admittedly, the appellate authority has already exercised discretion in favour of the petitioner, thereby directing the petitioner to deposit 50% of the amount due, instead of 75%, as stipulated under section 7-O of the said Act. He further submits that at the time of admission

of the petition, the petitioner ought to have deposited 50% of the amount i.e. Rs.1,53,67,084/-, however, the petitioner has deposited only 50% of the employer's share i.e. Rs.76,83,542/-. Further submission is that under section 7-O of the said Act, the petitioner is required to deposit 75% of the due amount at the time of filing of the appeal, however, the appellate authority has exercised discretion in favour of the petitioner, by directing the petitioner to deposit 50% of the amount due. He, therefore, submits that this Court may not exercise discretion under Article 227 of the Constitution of India to interfere in the discretion exercised by the appellate authority, particularly when the substantive appeal filed by the petitioner is pending before the appellate authority, which is now available.

10. In support of his submissions, learned advocate for the petitioner has placed reliance on ***"Express Publication (Madurai) Limited and Another V/s Union of India and Another", (2004) 11 SCC 526***

11. Having heard the learned advocate for the petitioner and the learned advocate for the respondent and having considered the relevant provisions and citations relied upon by both the sides, this Court is of the considered view that no interference is called for in the order impugned in the present writ petition. The

petitioner can contest the points raised in this petition before the appellate authority and get the appeal adjudicated on merits.

12. Indisputably, substantive appeal filed by the petitioner is pending before the CGIT. The CGIT has already exercised discretion in favour of the petitioner, by directing it to deposit 50% of the amount due, under section 7-A of the said Act, instead of 75% stipulated under section 7-O of the said Act. The petitioner is entitled to contest the appeal on merits. There is no illegality or perversity in the order impugned in the present petition. In the present case, it cannot be said that the CGIT has exercised its discretion in a manner not permitted by law. No injustice is caused to the petitioner, which warrants exercise of extraordinary writ jurisdiction in favour of the petitioner.

13. In ***"District Exhibitors Association"*** (*supra*), the question considered was whether, by making the Scheme with retrospective operation, the employer could be saddled with the liability to pay employees' contribution with effect from October 1, 1984. In that case, period from October, 1984 up to the date of impugned notification dated 13th April, 1986, the employer had paid full wages to the employees, since during that period, there was no scheme applicable to his establishment. By retrospectively applying the scheme, it was held that he could

not have asked to pay the employees' contribution for the period antecedent to the impugned notification. It was held that Act or scheme neither permit any such payment nor deduction.

Such are not the facts of the present case. The period for which the dues are calculated is between April, 2011 and October, 2017 which is admittedly after issuance of the notification and no retrospective effect is given in the present case, hence, the ratio in the above rulling is not helpful to the petitioner.

14. In ***"Regional Provident Fund Commissioner – II West Bengal V/s Vivekanand Vidya Mandir and Others"*** (supra), which was cited before the respondent and which is considered while passing the order, impugned in the appeal before CGIT, by taking into consideration provisions of section 2(b) (ii) read with 6 of the said Act, question considered was, whether, basic wages are liable for computation of deduction towards provident fund by applying test of universality. It was held that where wage is universally, necessarily and ordinarily paid to all across the board, such emoluments are basic wages. Further, it is held that any variable earning, which may vary from individual to individual according to their efficiency and diligence stand excluded from "basic wages". This issue is pending before the

CGIT in appeal, which will have to be considered by it on merits.

15. In ***"Express Publication (Madurai) Limited"*** (*supra*), it was held that employees of newspaper establishments alone not included in the category of "excluded employees" by eliminating ceiling limit of pay for them. It was held that notification of the Central Government dated 4th December, 1956 was not violative of Articles 14, 19 (1) (a) of the Constitution of India. The employees of the Newspaper Establishments, as distinguished from those of other industrial establishments, constitute a separate class and the classification has a reasonable relation to the object of ameliorating service conditions of such employees. Provisions of Working Journalists and Other Newspaper Employees (Condition of Service and Miscellaneous Provisions) Act, 1955, are also considered in this judgment along with the provisions of the said act.

16. For the aforesaid reasons, the writ petition being devoid of merits, is dismissed.

17. At this stage, learned advocate for the petitioner seeks continuation of the stay granted by this Court on 28th September, 2021. Stay granted in favour of the petitioner shall continue to operate for a period of four weeks from the date of uploading of

this order on the website of this Court, on the condition that the petitioner deposits an amount of Rs.76,83,542/- before the respondent, within a period of four weeks from the date of uploading of this order.

[NITIN B. SURYAWANSHI]
JUDGE

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